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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/990,770	11/21/2001	Melody Vos	5253-04200	1825

29855 7590 09/02/2005

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EXAMINER

ABEL JALIL, NEVEEN

ART UNIT PAPER NUMBER

2165

DATE MAILED: 09/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/990,770

Applicant(s)

VOS ET AL.

Examiner

Neveen Abel-Jalil

Art Unit

2165

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on July 20, 2005.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### Remarks

1. The Amendment filed on June 20, 2005 has been received and entered. Claims 1-45 are pending.

### *Double Patenting*

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 1-45 are provisionally rejected under the judicially created doctrine of double patenting over claims 1-39 of copending application Serial No. 09/991,561 and as that of claims 1-36 of copending application Serial No. 11/058,775. This is a *provisional* double patenting rejection since the conflicting claims have not in fact been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter.

4. Claims 1-45 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of VOS et al. U.S. Patent No. 6,944,630 B2. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are arguably broader than claim 1 of VOS et al.'630 which encompasses the same metes, bounds, and limitations. Therefore, it would be obvious to eliminate the limitations of the narrower claims, since it has been held that omission of an element and its function and a combination where the remaining elements perform the same functions as before involves only routine skill in the art. See In re Karlson, 136 USPQ 184.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Agarwal et al.  
(U.S. Patent No. 6,370,522 B1).

As to claims 1, 16, and 31, Agarwal et al. discloses

associating one or more policies or definitions with the database for managing database objects (See Agarwal et al. column 19, lines 1-21, wherein “one or more policies” reads on “execution plans”);

determining actions to be performed on one or more database objects to modify the one or more database objects based on one or more policies or definitions (See Agarwal et al. ;

performing the actions on the database objects (See Agarwal et al. column 14, lines 1-25, wherein “performing the actions” reads on “registration is being made...and.. alternative execution plan”);

monitoring results of modifying the database objects (See Agarwal et al. column 5, lines 16-30); and

reconfiguring the one or more policies or definitions associated with the database based on the results of modifying the database objects (See Agarwal et al. column 4, lines 30-50, wherein “policies” reads on “execution plan”, and wherein “modifying the database objects” reads on “objects... which does not build in support”).

As to claims 2, 17, and 32, Agarwal et al. discloses

automatically determining a schedule for performing the actions on the database objects, wherein the performing the actions on the database objects comprises performing the actions on the database objects based on the schedule (See Agarwal et al. column 6, lines 15-32, wherein “schedule” reads on “periodically”).

As to claims 3, 18, and 33, Agarwal et al. discloses

wherein the performing the actions on the database objects based on the schedule comprises automatically performing the actions on the database objects based on the schedule (See Agarwal et al. column 6, lines 15-32, wherein “schedule” reads on “periodically”).

As to claims 4, 19, and 34, Agarwal et al. discloses

confirming the performing the actions on the database objects (See Agarwal et al. column 14, lines 16-25, wherein “confirming the performing” reads on “generate alternative execution plan”).

As to claims 5, 20, and 35, Agarwal et al. discloses

collecting statistics relating to operation of the database (See Agarwal et al. column 19, lines 35-44); and

determining characteristics of the database objects (See Agarwal et al. Figure 6, wherein “characteristics” reads on “properties”, also see Agarwal et al. column 8, lines 4-17).

As to claims 6, 21, and 36, Agarwal et al. discloses

wherein the determining the characteristics of the database objects comprises automatically determining the characteristics of the database objects (See Agarwal et al. column 15, lines 62-67, also see Agarwal et al. column 16, lines 1-6).

As to claims 7, 22, and 37, Agarwal et al. discloses

wherein the determining the actions to be performed on the database objects comprises determining the actions to be performed on the database objects based on the characteristics of the database objects (See Agarwal et al. column 15, lines 36-67, wherein “the determining the actions” reads on “create”).

As to claims 8, 23, and 38, Agarwal et al. discloses

wherein the determining the actions to be performed on the database objects based on the characteristics of the database objects comprises automatically determining the actions to be performed on the database objects based on the characteristics of the database objects (See Agarwal et al. column 15, lines 36-67, wherein “the determining the actions” reads on “create”).

As to claims 9, 24, and 39, Agarwal et al. discloses

wherein the statistics comprise object-level statistics (See Agarwal et al. column 20, lines 36-46).

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As to claims 10, 25, and 40, Agarwal et al. discloses

wherein the statistics comprise activity-level statistics (See column Agarwal et al. 20, lines 36-46, wherein “activity level” reads on “execution”).

As to claims 11, 26, and 41, Agarwal et al. discloses

wherein the determining the characteristics of the database objects comprises determining the characteristics of the database objects using the collected statistics (See Agarwal et al. column 15, lines 62-67, also see Agarwal et al. column 16, lines 1-6).

As to claims 12, 27, and 42, Agarwal et al. discloses

wherein the determining the characteristics of the database objects comprises determining the characteristics of the database objects using the one or more policies (See Agarwal et al. Figure 6, wherein “characteristics” reads on “properties”, also see Agarwal et al. column 8, lines 4-17).

As to claims 13, 28, and 43, Agarwal et al. discloses

wherein the determining the characteristics of the database objects comprises determining the characteristics of the database objects using the one or more definitions (See Agarwal et al. column 8, lines 4-17).

As to claims 14, 29, and 44, Agarwal et al. discloses



customizing the one or more definitions (See Agarwal et al. column 10, lines 1-9, wherein “customizing” reads on “appropriately defined selectively function”).

As to claims 15, 30, and 45, Agarwal et al. discloses

customizing the one or more policies (See Agarwal et al. column 8, lines 51-67, wherein using different heuristic to determine alternative statistics also constitute customization).

### *Response to Arguments*

7. Applicant's arguments with respect to claims 1-45 have been considered but are moot in view of the new ground(s) of rejection.

### *Conclusion*

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


Chandra (U.S. Patent No. 6,397,359 B1) teaches Object Management information database.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neveen Abel-Jalil whose telephone number is 571-272-4074. The examiner can normally be reached on 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Gaffin can be reached on 571-272-4146. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Neveen Abel-Jalil

  
CHARLES RONES  
PRIMARY EXAMINER